

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL DORMAN, *et al.*,

Plaintiffs,

Case No. 15-cv-12552
Hon. Matthew F. Leitman

v.

TOWNSHIP OF CLINTON,

Defendant.

/

ORDER DIRECTING PARTIES TO FILE SUPPLEMENTAL BRIEFS
BY MONDAY, JULY 11, 2022, AT 10:00 a.m.

Now before the Court is a dispute between the parties over punitive damages. Defendant Clinton Township has objected to any effort by Plaintiffs to seek punitive damages. The basis for that objection was twofold: (1) Plaintiffs did not specifically make a claim for punitive damages (or otherwise properly plead a claim for punitive damages) in their Amended Complaint and (2) Plaintiffs failed to disclose their claim for punitive damages in accordance with Rule 26(a)(1)(A)(iii) of the Federal Rules of Civil Procedure. (*See* ECF No. 163.) Plaintiffs filed a response to the Township's objection. (*See* ECF No. 165.)

On July 7, 2022, at approximately 4:30 p.m., the Township filed a reply brief in further support of its objection to Plaintiffs' claim for punitive damages. (*See* ECF No. 167.) In that reply brief, the Township argues, for the first time, that punitive

damages are not available against a municipality. (*See id.*) That argument arguably comes too late to the extent that it is offered in support of the Township's pending objection to Plaintiffs' punitive damages claim. A party generally may not offer a new argument for the first time in a reply brief.

However, the Township does seem to have raised its new argument in time to object to any jury instruction on punitive damages. Therefore, it is essential that both parties are fully heard on the question of whether Plaintiffs may recover punitive damages on their federal claims against the Township. The Court believes that the best course of action is to attempt to resolve this important dispute, if possible, prior to the start of trial. Therefore, the Court directs both parties to file an additional supplemental brief, **by no later than 10:00 a.m. on Monday, July 11, 2022**, addressing the following two questions:

- (1) Are punitive damages available against the Township under the Plaintiffs' claims brought pursuant to 42 USC § 1983? In answering this question, the parties shall address, among other things, the Supreme Court's decision in *City of Newport v. Facts Concerts, Inc.*, 453 U.S. 247 (1981).
- (2) Are punitive damages against the Township available under Plaintiffs' claims brought pursuant to the Religious Land Use and Institutionalized Persons Act?

The Court is ordering both parties to file supplemental briefs because it believes additional input from the Township as well as Plaintiffs is important.

During the on-the-record status conference that the Court will hold on July 11, 2022, at 2:00 p.m., the Court will address (1) whether Plaintiffs should be precluded from seeking punitive damages based upon their alleged failure to properly plead and disclose those damages; and (2) whether punitive damages are available to Plaintiffs under either of the statutes under which they bring their claims.

IT IS SO ORDERED.

Dated: July 7, 2022

s/Matthew F. Leitman
MATTHEW F. LEITMAN
UNITED STATES DISTRICT JUDGE

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on July 7, 2022, by electronic means and/or ordinary mail.

s/Holly A. Ryan
Case Manager
(313) 234-5126